

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Petitioner,

vs.

Case No. 17-2598

KIDS VILLAGE EARLY LEARNING  
CENTER, OWNER OF KIDS VILLAGE  
EARLY LEARNING CENTER,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on July 6, 2017, in Tallahassee, Florida, before Administrative Law Judge Suzanne Van Wyk of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael Andrew Lee, Esquire  
Department of Children and Families  
2383 Phillips Road, Room 231  
Tallahassee, Florida 32308

For Respondent: Angela Mitchell, pro se  
Kids Village Early Learning Center  
1000 West Tharpe Street, Suite 24  
Tallahassee, Florida 32303

STATEMENT OF THE ISSUE

Whether Petitioner, Department of Children and Families' (the Department), intended action to cite Respondent, Kids

Village Early Learning Center, with a Class I violation and impose a fine in the amount of \$500, is appropriate.

PRELIMINARY STATEMENT

The Department issued an Administrative Complaint dated February 23, 2017, charging Respondent with a Class I violation of child care facility licensing standards and imposing a monetary fine of \$500 against Respondent. Respondent timely filed a request for formal administrative hearing to contest the Department's decision.

The matter was originally assigned to Administrative Law Judge Yolonda Y. Green and scheduled for final hearing on July 6, 2017. The case was transferred to the undersigned on July 5, 2017, and the final hearing commenced as scheduled.

At the final hearing, the Department offered the testimony of two witnesses: Angela Mitchell, Director of Kids Village Early Learning Center (Kids Village); and Elizabeth Provost, the Department's family services counselor. Respondent offered the testimony of Ms. Mitchell and Kids Village employees, Pamela Sampson and Teresa Walker.

Petitioner's Exhibits 1 through 8 were admitted in evidence, and the undersigned granted the Department's request for official recognition of section 402.310, Florida Statutes, and Florida Administrative Code Rule 65C-22.010.

The proceedings were recorded but the parties did not order a transcript of the final hearing. Each party timely filed a Proposed Recommended Order (PRO) and each party's PRO was considered in the preparation of this Recommended Order.

Unless specifically stated otherwise herein, all references herein to Florida Statutes are to the 2016 codification.

#### FINDINGS OF FACT

1. The Department is responsible for licensing and monitoring "child care facilities," as that term is defined in section 402.302(2), Florida Statutes. Kids Village is a child care facility licensed by the Department.

2. Kids Village is operated by Angela Mitchell and is located at 1000 West Tharpe Street, Suite 24, Tallahassee, Florida. Kids Village is located in a shopping area commonly referred to as a "strip mall," a series of retail and office establishments located along a sidewalk with exterior entrances. A Dollar General store is located across the parking lot from the strip mall.

3. On November 2, 2017, L.C., a two-year-old child enrolled at Kids Village, exited the facility unaccompanied and on his own volition. A stranger spotted the child in the parking lot near the Dollar General store and left her vehicle to pick up the child. A parent of a former student at Kids Village, who works in the strip mall, recognized L.C. and

returned him to the facility. L.C. was absent from the facility for approximately four minutes.

4. Teresa Walker, a teacher at Kids Village, who was working on the day of the incident, called and reported the incident to Ms. Mitchell, who was not working at the facility that day.

5. Both Ms. Walker and Ms. Mitchell completed required incident reports and filed them with the Department.

6. The incident was also the subject of an anonymous complaint received by the Department's child abuse hotline the same day.

7. Elizabeth Provost, a Department family services counselor, received both the incident reports and the complaint and began an investigation. As part of her investigation, Ms. Provost interviewed the child protective investigator who received the complaint from the abuse hotline, as well as Ms. Mitchell and Ms. Walker. Ms. Provost also viewed the facility's security camera footage from the day of the incident.

8. Based on her investigation, Ms. Provost determined that L.C.'s mother arrived at the facility on the morning of November 6, 2017, signed the child in at the reception desk, engaged in conversation with another employee of the facility, looked around the corner where a gate separates the reception area from a hallway leading to classrooms, then exited the

facility. Afterward, security video shows L.C. exiting the facility without supervision.

9. Based upon her investigation, Ms. Provost concluded that the facility was in violation of Florida Administrative Code Rule 65C-22.001(5), which reads, in pertinent part, as follows:

Direct supervision means actively watching and directing children's activities within the same room or designated outdoor play area, and responding to the needs of the child. Child care personnel at a facility must be assigned to provide direct supervision to a specific group of children at all times.

10. Ms. Provost also determined the violation was a Class I violation of Department rules, which is described as "the most serious in nature, [which] pose[s] an imminent threat to a child including abuse or neglect and which could or does result in death or serious harm to the health, safety or well-being of a child." Fla. Admin. Code R. 65C-22.010(1)(d)1.

11. At hearing, Ms. Mitchell admitted that, on November 2, 2016, L.C. was indeed faced with a serious or imminent threat to his safety which could have resulted in injury or death. As such, Ms. Mitchell admitted the Department properly determined the incident was a Class I violation of rule 65C-22.001(5).

12. Ms. Mitchell's contention was that Kids Village was not completely at fault, and that the penalty assessed should be reduced to account for the mother's negligence.

13. L.C. was known to the staff at Kids Village as a "runner." He experienced separation anxiety and would frequently try to follow his mother when she left the facility after dropping him off for school. Ms. Mitchell testified that L.C.'s mother had been instructed to walk L.C. to his classroom and hand him over to his teacher before leaving the facility.

14. Ms. Mitchell faults the mother for having signed the child in on the morning of the incident, but leaving the facility without walking the child all the way to his classroom. The evidence adduced at hearing did not support that version of the facts.

15. Ms. Walker was the only witness who testified at the final hearing who was actually at the facility on the day in question. Her recollection of the events was clear and her testimony was credible.

16. Ms. Walker works in the "baby room," which is located to the left of the reception area past the reception desk. The gate separating the reception area from the hallway to the classrooms is to the right of the reception desk.

17. Ms. Walker testified that after his mother signs L.C. and his older brother in on most mornings, L.C. comes to stay

with her in the baby room. Ms. Walker gives him hugs and extra attention to help overcome his anxiety, then walks him to his classroom when he is calm.

18. On the morning in question, L.C.'s mother came into the facility and signed the children in at the reception desk. Signing a child in requires both completing a physical sign-in sheet, and an electronic interface with a computer system. While his mother was signing in the children, L.C. went to the baby room where Ms. Walker greeted him and hugged him. L.C.'s mother finished signing in the children and talking to the staff, then she turned to find both children gone. The mother "hollered out" to Ms. Walker something to the effect of "Where did the children go?" Ms. Walker replied that they had gone "to the back."

19. L.C.'s mother walked over to the gate separating the reception area from the classroom hallway and peered around it down the hallway. She then exited the facility.

20. Shortly thereafter, L.C. came back through the gate, into the reception area, and exited the facility through the front door unaccompanied.

21. L.C. was alone outside the facility in a crowded parking lot of a retail strip mall for almost five minutes. He had crossed the parking lot during morning traffic to almost reach the Dollar General store. L.C. was spotted by a stranger

who got out of their own vehicle to pick up the child. L.C. was recognized, and returned to the facility, by someone who worked at a nearby store. One does not need an overactive imagination to list the dangers that could have befallen the child during that brief time period.

22. Kids Village has taken corrective action since the incident and installed a security system on the front door which requires a person to push a button on a panel next to the door in order to exit the facility.

23. There was no testimony regarding any prior citations against Kids Village for violation of child care licensing standards. The investigative summary prepared by Ms. Provost states, "Kid's Village has one prior with the Department earlier in 2016[;] there were no indicators of inadequate supervision."

24. Rule 65C-22.010(2)(e) provides appropriate disciplinary sanctions to be imposed for Class I violations, as follows:

For the first and second violation of a Class I standard, the department shall, upon applying the factors in Section 402.310(1), F.S., issue an administrative complaint imposing a fine of not less than \$100 nor more than \$500 per day for each violation, and may impose other disciplinary sanctions in addition to the fine.

25. Section 402.310(1)(b) provides:

In determining the appropriate disciplinary action to be taken for a violation as



provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 401.301-402.319 have been violated.

2. Actions taken by the licensee or registrant to correct the violation or remedy complaints.

3. Any previous violations of the licensee or registrant.

26. In determining to impose a \$500 penalty, Ms. Provost considered the subsequent remedial action taken by Kids Village to prevent future escapes by children in its care. She also considered the serious threat of harm or death posed to L.C. due to inadequate supervision by Kids Village. Imposition of the maximum fine for the Class I violation is supported by the record in this case.

27. Neither the statute nor the rule direct the Department to consider the negligence of persons other than the licensee in determining the appropriate penalty to be imposed for a Class I violation.

#### CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over this matter pursuant to section 120.57, Florida Statutes.

29. In cases where a state agency alleges that a licensee engaged in wrongdoing, the burden is on the Department to prove the wrongdoing. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1996). Factual findings based on record evidence must be made indicating how the alleged conduct violates the statutes or rules or otherwise justifies the proposed sanctions. Mayes v. Dep't of Child. & Fam. Servs., 801 So. 2d 980, 982 (Fla. 1st DCA 2001).

30. The standard of proof in this case is clear and convincing evidence because the Department is seeking to discipline Ms. Mitchell and/or Kids Village and take action detrimental to Ms. Mitchell's license, thus making the matter penal in nature. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

31. The clear and convincing standard has been described as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

32. The Department is authorized by section 402.310 to impose sanctions against a licensed child care facility which violates provisions of licensing standards. Those licensing standards are found in sections 402.310 through 402.319 and rule 65C-22.

33. Section 402.310 states in pertinent part:

(1) (a) The department or local licensing agency may administer any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder:

1. Impose an administrative fine not to exceed \$100 per violation, per day. However, if the violation could or does cause death or serious harm, the department . . . may impose an administrative fine, not to exceed \$500 per violation per day in addition to or in lieu of any other disciplinary action imposed under this section.

34. The Department proved, by clear and convincing evidence, that the imposition of a \$500 fine for the Class I violation was entirely appropriate given the seriousness of the potential harm that could have come to the child due to inadequate supervision, even considering the subsequent remedial action taken by Kids Village.

#### RECOMMENDATION

Upon consideration of the evidence presented at final hearing, and based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be

entered by Respondent, Department of Children and Families,  
finding Kids Village Early Learning Center committed a Class I  
violation of child care facility licensing standards and  
imposing a monetary sanction of \$500.

DONE AND ENTERED this 1st day of August, 2017, in  
Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of August, 2017.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.